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RE: Recent Water Quality Legislation

Dear Ann:

In response to your November 3, 2003 inquiry concerning certification pursuant to 40 CFR § 131.6(e), "that the water quality standards were duly adopted pursuant to state law," I offer the following.

1. Chapter 37 (LD 1059), "An Act Regarding Water Storage Reservoirs" was finally passed by the Maine Legislature on May 15, 2003 and signed into law, as a Resolve, by the Governor on May 21, 2003.¹
2. Chapter 227 (LD 443), "An Act to List Agriculture as a Designated Use in Water Quality Standards" was passed by the Maine Legislature on May 14, 2003 and signed into law by the Governor on May 21, 2003.
3. Chapter 245 (LD 1547), "An Act to Amend Certain Laws Administered by the Department of Environmental Protection" was passed by the Maine Legislature on May 16, 2003 and signed into law by the Governor on May 21, 2003.
4. Chapter 257 (LD 1137), "An Act Regarding Riverine Impoundments" was passed by the Maine Legislature on May 20, 2003 and signed into law by the Governor on May 23, 2003.
5. Chapter 317 (LD 1529), "An Act to Reclassify Certain Waters of the State" was passed by the Maine Legislature on May 21, 2003 and signed into law by the Governor on May 27, 2003.

¹ Acts of the Maine Legislature do not become effective until 90 days after adjournment, unless enacted as emergencies. Unless otherwise noted, these statutes were not enacted as emergency legislation.

6. Chapter 418 (LD 1308), "An Act to Implement the Recommendations of the Department of Environmental Protection on Ambient Water Quality Criteria for Mercury" was passed as a public law in the First Regular Session of the 120th Legislature in 2001, and as an emergency enactment. It became effective upon approval on June 15, 2001.

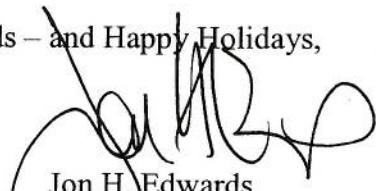
In addition, as requested, I reviewed Chapters 39, 79, 134, 165, 246, 277, 301 and 502. I am in agreement that one, or more, of these resolves or statutes may lead to revisions of water quality standards in the future. However, as you noted in your e-mail, none of these acts appears to revise water quality standards at this time. Accordingly, I have not certified them as having been "duly adopted."

Pursuant to 40 CFR §131.21, we look forward to EPA's timely review and action. We do, however, acknowledge that under federal law the State's current water quality standards remain the applicable standards until EPA approves any changes, deletions or additions.

Finally, you asked whether, in my opinion, Section 7 of Chapter 245 creates a conflict with 40 CFR §131.20, which requires states to review and revise if necessary their water quality standards at least once every 3 years. The short answer is yes, Section 7 appears to be in conflict with §131.20. Accordingly, it is my understanding that, at the earliest opportunity, DEP will be submitting legislation to restore the previously required three-year period of review.

If I can be of further assistance, please do not hesitate to contact me.

Best regards – and Happy Holidays,



Jon H. Edwards
Assistant Attorney General
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Cc: Hetty L. Richardson, DEP
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